The Michigan Association of Justice strongly supports penalizing Insurance companies for Insurance fraud.

These bills will better level the playing field between insurers and their insured by removing the economic incentives that presently exist for insurers to unreasonably deny, delay, or cut insurance claims in an effort to increase their profits.

Michigan is one of only four states where insurance corporations face no real penalties for failing to deal honestly and in good faith with their own policyholders. Over 50% of the complaints each year over the last eight years handled by the Insurance commissioner concern claims handling. [1]

Currently the only recourse a consumer has against an insurer that denies or delays a legitimate claim is to hire an attorney and go to court to force the insurer to pay what it owes. In some cases the consumer may be able to get attorney fees or interest. But all too often a policyholder facing denial will just give up fighting a meritorious claim or take a percentage of what they are rightfully owed, creating a strong incentive for insurers to deny claims.

Even if a policyholder does not give up, it can be profitable for an insurance corporation to deny or delay a claim due to the time value of money and the lack of any meaningful penalty or disincentive for the insurer's failure to pay. The package of bills provides such a real disincentive to discourage insurance companies from denying and delaying valid claims.

None of the bills changes anything in existing contractual relationships between insurance carriers and policyholders. If carriers treat their policyholders fairly and reasonably the changes in the law will not come into play. It is only in cases where policyholders are being cheated that the insurance corporations will now face penalties.

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[1] See attached summary for 2007. "Insurance company" includes all lines of insurance, "Other" includes insurance agencies and insurance agents.

2007 Calendar Year

Complaint Reasons

A complaint may have more than one reason. Therefore the total number of complaint reasons may not match the total number of complaints

Reason	Insurance Company	Blue Cross	HMO	Other	Total
Claim Handling	1,486 (55%)	557 (50%)	368 (68%)	10 (23%)	2,421
Customer Service	602 (22%)	436 (39%)	189 (28%)	8 (19%)	1,235
Underwriting	321 (12%)	103 (09%)	22 (04%)	1 (02%)	447
Marketing & Sales	313 (11%)	10 (01%)	5 (00%)	14 (33%)	342
Non-Compliance	0 (00%)	0 (00%)	2 (00%)	8 (19%)	10
Other	0 (00%)	0 (00%)	0 (00%)	2 (05%)	2
Totals:	2,722	1,106	586	43	4,457

When it all blows up

Fire/explosion lawyers race against time to work for policy holders

Practice profile

By Carol Lundberg

In the hours following the catastrophe of an explosion or a fire, one of the first things that comes to mind is, "Call the insurance company."

Rarely does anyone think: Call my lawyer.

But that oversight can be costly, particularly in Michigan, says Stuart A. Sklar of Farmington Hills-based Fabian, Sklar & King, which represents insurance policy holders in fire and explosion claims.

"If you have an explosion, there is a compelling need for people to move quickly," Sklar said. "If you have a natural gas explosion, before the fire is out, the gas company is out there getting evidence, and evidence starts disappearing early."

That, he says, compromises the integrity of the scene, putting the property owner at a huge disadvantage.

Policy holders are already at a significant disadvantage in Michigan because the state does not penalize insurance companies for acting in bad faith, said Michael H. Fabian, who founded the firm 22 years ago.

"Insurers write the policies," Fabian said. "Michigan is the only state where the courts treat the policy as if it was part of an arms-length negotiation. When you look at case law, in Michigan you never see the policies treated as contracts of adhesion, which they are.

"The reasonable expectation of the parties is not relevant. The parties are not on equal footing."

Busting bad faith

Michigan also is one of a small number of states where there is no recourse for policyholders to recover anything other than actual damages when an insurance company operates in bad faith.

So an insurance company can stall paying a claim in hopes that the insured will accept a fraction of what their policies cover, Sklar said. Even when the claim is eventually paid in full, the insured is not allowed to recover attorney fees or punitive damages from the insurer. A significant amount of the claim, then, must pay the cost of litigation.

For example, Sklar said, he had a client last year who lost his house in a fire. The house was valued at $700,000 and was a total loss.

The homeowner's insurance company sent an adjuster to the scene. The adjuster talked to the fire investigator, who said he had no idea how the fire started. It was in the wintertime, and the frozen water at the scene prohibited him from being able to determine the cause, Sklar said.

"Without knowing how the fire started, the insurance company not only denied the claim, but also said it was arson," Sklar said, throwing his hands into the air with disbelief.

"We had no choice but to sue the insurance company in order to collect," he added.

So Sklar sent out a discovery request and took depositions of investigators.

"Then they knew they'd been caught. So the insurance company stepped up and agreed to pay the claim," he said. "If that isn't bad faith — because the adjuster knew based on what the investigator said that there was no way to know how the fire started — I don't know what is.

"In any other state, an insurance company would have been liable for punitive damages and attorney fees. It's almost as if in Michigan, it's OK to take a free shot at the insured."

Bad for business

It's always been this way, Fabian said. But its grown worse over time, particularly since the Michigan Consumer's Council was eliminated in 1991, taking away the few protections against their insurance companies Michigan residents had.

Every year, the state legislature proposes new laws that would protect policyholders, and every year, the state's legislators lose interest or get beaten down by conservative lawmakers who, according to Fabian, "think insurance companies are the only businesses worth protecting."

He said the impact on most of Michigan's other businesses — particularly small business — is devastating.

Fabian had a client, Gainor's Meat Packing Inc., a Bad Axe company that was burned out of its building in July 2002. The company was a third-generation, family-owned business, and was a good employer in the community, Fabian said.

The client's insurance company offered pennies on the dollar to settle the claim, asserting that only $292,000 worth of damage had been done to the building, Fabian said. The insurer argued that the business had exaggerated its losses.

Even though the company supplied documentation showing it had lost a total of more than $1.6 million, it submitted a claim of just a little more than $1 million, according to its policy limit.

The fight between the meat packing company and the insurance company took nearly five years before it was settled in the Court of Appeals.

Fabian's client prevailed, and received 99.8 percent of its claim. But the business was closed during the fight, and its owners went bankrupt. The community lost an employer, Fabian said.

It happens all the time, Sklar said.

That's why Patrick A. King went to work with Fabian and Sklar after 21 years of representing insurance companies, he said.

"The insurance company perspective changed from, 'Let's catch the fraud,' to 'Let's manufacture the fraud,'" he said. "It wasn't fun to represent these companies that I had been proud to represent for so many years."

Racing against time

He and Sklar are both certified fire and explosion inspectors, which is crucial when time is working against them.

Such was the case in July 2006, when Sklar got a call on a Tuesday afternoon. He had to get to Ellison Bay, Wis., where a gas explosion had injured seven people, and had in the early morning the day before killed two Michigan lawyers — Patrick and Margaret Higdon of Bloomfield Hills. The couple's three children, and relatives who were vacationing with the family, had survived.

Less than 24 hours after he got the call, Sklar had a team assembled on the ground in Wisconsin, working with investigators and gathering information needed to work for the survivors of the explosion.

"You have to get whoever is on the scene to stop doing what they're doing until everyone gets there," Sklar said.

Sometimes it's not so difficult to do that. But having "street creds" — a background — helps. For example, when Sklar showed up at the scene of a Bloomfield Hills fire and asked the fire marshal to stop doing what he was doing, in order to let him get up to speed in the investigation.

The fire marshal balked at the request, and referred to the industry authority on investigations, his year-old copy of the "NFPA 921: Guide for Fire and Explosion Investigations," published by the National Fire Protection Association. The guide is considered the "Bible" of the profession.

Sklar pulled out his own copy, the newest version, and opened it to the page where he is listed as a voting member of NFPA.

"That worked," Sklar said.

Sometimes, local police and fire investigators are happy to see him. They're often all too willing to let lawyers foot the bill to pay for heavy equipment or expert investigators.

Other times, he's met with outright hostility, and the firm has had to sue to get access to the scene.

In the Higdon case, he was able to help the children receive a $21 million settlement, reached in May of this year; the adult relatives received a confidential amount, he said.

"Usually people don't think to call a lawyer after a fire or explosion until their insurance company tries to lowball them on a claim," Sklar said. "Only when someone is injured or killed do people think right away to call a lawyer. But even then, it's almost never early enough. We can't possibly be at the scene too early."

Why Michigan Insurance Companies Can Now Lie - and Legally Get Away With It

Friday, May 29, 2009 by Steven M. Gursten

Johnson v. Wausau is truly one of the most disturbing cases I have ever read, and the public policy it creates for Michigan residents could not be worse. In Johnson, an insurance company deliberately lied to save money from paying insurance benefits to a 10-month-old little girl with catastrophic traumatic brain injuries from a car accident, continued this fraud for 16 years and got away with it. After this tragic case, insurance company adjusters can now deliberately and intentionally lie to their own policy holders to save money - legally.

In Johnson, [Docket No. 281624] the Michigan Court of Appeals recently held that even if an insurance claims adjuster's representation is fraudulent — meaning even if it's a deliberate lie — an insured person in Michigan cannot establish that he or she relied on this lie to sue the insurance company for fraud.

The Court's ridiculous reasoning is that any person should check out the accuracy of anything and everything an insurance claims adjuster says by consulting with a lawyer.

The Court "logic" apparently goes like this:

1. We should assume our own insurance company will lie to us.

2. When an insurance company claims adjuster lies to us, the right to bring a lawsuit for fraud (or common law breach of contract), is not available because everyone has an "ability" to consult with a lawyer.

3. Because the public has the ability to call lawyers and double-check the accuracy of what our insurance company claims adjuster is saying, there is no reliance.

4. Without reliance, because of this hypothetical right to review what a claims adjuster is saying, even deliberate and intentional lies from our own insurance company will not constitute fraud. Therefore, the claim for fraud must fail.

My friend James L. Borin, an excellent insurance defense lawyer, observed in his Garan Lucow Miller newsletter that is read by hundreds of insurance company adjusters around Michigan, "Since a person, presumably, always has the ability to consult with a lawyer, can a plaintiff ever establish a claim for fraud???"

Just what we want to be telling insurance company claims adjusters! Now open season on Michigan drivers will begin.

Michigan No-Fault Insurance Lawyers Ask Why is this Happening

There is so much wrong with this decision, it's almost difficult to begin, but let's start with the underlying premise: That people can double-check the accuracy of everything their own claims adjuster says about your auto insurance policy with a lawyer. This is completely wrong. Most people do not have unfettered, free access to insurance lawyers who understand Michigan's no-fault insurance laws.

Also, most people cannot pay for the type of legal advice that this Court just assumes people can get. And why should people have to check everything a claims adjuster is telling them with a lawyer anyways?

Consider these important questions:

Why are we allowing these insurance company adjusters to deliberately lie to their own insureds? How is the public policy in Michigan being served by forcing anyone and everyone to have to hire a lawyer?

As a Michigan auto accident lawyer, I would be the first to tell you that people should be able to receive no-fault insurance benefits from their own insurance company, assuming they are being paid voluntarily, without having to hire a lawyer.

And as I wrote in my previous blog, "... what makes (Johnson) horribly unfair is that the Court basically contended a catastrophically injured person should somehow learn about attendant care (nursing services) on her own or be forced to seek a lawyer's advice, because presumably, an insurance company adjuster cannot be trusted to inform an injured person what benefits she is owed. It's hard to think of a reason why the Court would protect insurance companies with such unclean hands, or punish those who are obviously in a vulnerable and unequal position by presuming they should know every one of their legal rights — especially when these people have undergone horrible personal injuries that require attendant care to start."

Keep in mind that the average person does not have a copy of their no-fault insurance policy, let alone read all of it. It should also be noted that nowhere in the entire Michigan No-Fault Act is attendant care specifically mentioned or described, and most lawyers do not fully understand or know how to handle attendant care claims. This gives insurance adjusters complete power when dealing with their customers, because they have information about Michigan's complicated no-fault law that they average driver does not understand, let alone have access to because again, it's not fully described in a no-fault insurance policy. Yet Court of Appeals Judges Saad, Bandstra and Hoekstra would presume a person who's been catastrophically injured should somehow understand this very technical and complicated area of Michigan insurance law."

Insurance Company Fraud and Lies v. Brain Damaged 10 Month Old

Who are we protecting, a lying insurance company or a brain-injured 10 month old?

Johnson was about a 10- month-old named Nancy, who suffered severe traumatic brain injuries in a 1983 auto accident. When Nancy was finally released from the hospital, Dorothy Bencheck became her legal guardian and provided her with 24-hour care.

If we accept the plaintiff's version of the facts as true, Wausau Insurance never told Bencheck she was entitled to attendant care insurance benefits, also referred to as nursing services. Instead, Bencheck was told she was only entitled to $20 per day in replacement services (chores/help with children). When Bencheck called the no-fault insurer on many occasions asking whether she was entitled to additional benefits for the care she provided, she never told about attendant care.

This caused enormous financial stress and difficulties, not only for the brain injured little girl, but also for Ms. Bencheck, who had to put everything else in her life on hold to take care of her. In 1989, Bencheck was under such severe financial stress that she was no longer able to care for Nancy, who was then about six years old at the time. So in 1990, Tammy Johnson became legal guardian and care provider. She too received only the $20 per day in replacement services instead of the 24/7 attendant care she was entitled to.

This continued for another 16 years, until in the summer of 2006, when Johnson consulted with an attorney and finally sued her own no-fault insurer for breach of contract under the no-fault act and for common law fraud.

To sum it up, an insurance company is legally responsible under Michigan no-fault insurance law to pay attendant care benefits, yet the adjuster in this case lies to the person taking care of a baby with a severe brain injury, causing enormous financial hardship for the little girl and her care providers. This goes on for years, ruining two lives. When a lawsuit is finally filed, the Court says the caretakers cannot sue because the severely brain damaged girl and the people now taking care of her should have discussed the issue with a lawyer at the time of the car crash.

As a Michigan insurance lawyer, I worry about the thousands of people who will now be lied to by insurance company adjusters. And why not lie? By lying to their own policyholders, these insurance company adjusters will save millions of dollars at the expense of the most vulnerable and catastrophically injured members of our communities, and they are now legally protected for doing so.

Steve Gursten is recognized as one of the nation's top experts in serious car and truck accident injury cases and automobile insurance no-fault litigation. Steve has received the largest jury verdict for an automobile accident case in Michigan in four of the past seven years, including 2008.